IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7215 OF 2002

Bhikaji Limbaji Sathe..... ..... Petitioner.

Versus

Sudarshan Prakash Shinde & Ors..... Respondents.

Mr. S.S.Kulkarni for the Petitioner.

Mr. M.R.Deshpande for Respondent No. 2.

CORAM : S. C.DHARMADHIKARI, J.

DATED : 20TH DECEMBER, 2004.

P.C.:

The Petitioner is one of the Respondents before the Mamlatdar's Court in Application No.2 of 2002.

2. Admittedly, the Mamlatdar's Court initiated an enquiry vide powers conferred under Section 5 of the Mamlatdar's Courts Act, 1906 on the application made by some of the Agriculturists dated 10th December, 2001 and passed an order on 27th February, 2002 directing that the Petitioner should not obstruct use by the Applicants Agriculturists of a road except by due process of law. That order of the Mamlatdar was challenged in Revision application under Section 23(2)

of the said Act. The Additional Collector, Solapur by the impugned Order has dismissed the Petitioner's revision application.

3. Shri Kulkarni, learned Counsel appearing for the Petitioner, firstly, contended that the issues cannot be decided by the Mamlatdar in as much as the customary right of way will have to be first established before his powers are invoked. In the absence of the above, the Mamlatdar could not have gone into the issue arising for consideration. In any event, he submits that the Petitioner has been seriously prejudiced in as much as a panchnama was drawn on 27th February, 2002 allegedly in presence of parties. The Petitioner and others were not afforded any opportunity to object to the contents of the panchnama as the Mamlatdar delivered his order on the very day. The entire action is, therefore, vitiated by breach of principles of natural justice.

4. Shri Deshpande, learned Counsel appearing for Respondent No.2, on the other hand submits that the Mamlatdar as well as the revisional authority has taken into consideration the entire material and a finding of fact has been recorded and therefore this Court should not interfere in exercise of its writ

jurisdiction.

5. In my view, Section 5(2) of the Act is clear. It confers powers on Mamlatdar to issue an injunction against a person who has caused or attempted to cause disturbance or obstruction or erected or attempted to erect any impediment in the use of roads or customary ways. Therefore, prima facie, the issue could have been taken by the parties to the Mamlatdar. However, the Mamlatdar in this case has not bothered to comply with the principles of natural justice in as much as notice was given to the parties to remain present on 27th February, 2002 at 10.00 a.m. for the purposes of determining the obstruction to the road. It is clear that the Petitioner has been objecting right throughout that the Applicants have not furnished proof of a customary right of way. Reliance was placed by him on the village map and other documents in support of his submission. The Mamlatdar has neither adverted to this material nor does it appear from his order that parties were given opportunity to object to the panchnama drawn on 27th February, 2002. The Mamlatdar has proceeded hastily and passed an order of injunction on the date on which the panchnama has been drawn.

6. In my view, therefore, considering the facts and circumstances of this case, the revisional authority ought to have interfered and directed fresh inquiry. The revisional authority has committed an apparent error in entering into merits of the controversy without pronouncing upon this vital aspect. Consequently, the order of the revisional authority confirming the order of the Mamlatdar cannot be sustained.

7. The Mamlatdar concerned shall initiate fresh inquiry in Application No. 2 of 2002 and pass appropriate orders after giving full opportunity to the contesting parties and without being influenced by the observations and findings in the impugned order. The Mamlatdar to complete the necessary inquiry as expeditiously as possible and in any event within a period of three months from today.

8. Writ Petition is disposed of with the above directions.

9. All parties concerned to act on an ordinary copy of this order duly authenticated as true copy.

Sd/-

(S. C. DHARMADHIKARI,J.)